S.B. Civil Revision Petition No.42/05
Vipin Saxena Vs. Kailash Chandra

Date of Order : 07/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Mahesh Sharma for] for petitioner
Mr. Amit Sharma]
Mr. Mahesh Sharma, for respondent

Instant revision petition has been filed by the petitioner-defendant against the order dt.13th December, 2004 whereby the provisional rent has been determined by the learned trial court u/s.7 of the Act pending suit filed by the respondent-plaintiff for determination of standard rent u/s.6 of Rajasthan Rent Control Act, 2001.

The respondent-plaintiff filed a suit for determination of standard rent u/s.6 before the competent court of jurisdiction pending suit, application was filed for determination of provisional rent u/s.7 of the Act, 2001. The learned trial Judge after taking into consideration material determined Rs.1400/- per month as rent of the suit premises vide order dt.28th October, 2004 and in the appeal, the First Appellate Court vide its order dated 13th December, 2004 reduced the same to Rs.1,000/- per month. Hence, this revision petition.

Counsel for petitioner submits that there was no material available even for determining Rs.1,000/- per month as provisional rent, particularly, when the premises in question occupied by him is on 3rd floor and other facilities are available on the ground floor which is otherwise

inconvenient for one to reside and undisputedly, according to him, it is used for residential purpose only and initially he took on rent of Rs.95/- and the same has been revised to Rs.150/- from time to time. In such circumstances, revising the rent on provisional basis from Rs.150/- to Rs.1,000/- has no rational basis and the finding in this regard recorded by the learned court below requires interference by this court.

Counsel for respondent before making submission on merits of the matter, raised preliminary objection that it was only a provisional determination of rent, suit is still pending where the standard rent has to be determined by the court and rights of the parties have not been finally determined under the order impugned. In such circumstances, the revision petition, after amendment which came into force w.e.f. 1st July, 2002 u/s.115 CPC is not maintainable. Apart from preliminary objection, counsel further submits that sufficient material has been placed on record and evidence was led in support of the contention to establish that in the adjustment premises of similar like nature more than Rs.1800/- rent is being paid and no rebuttal came from side opposite. In such circumstances, according to him, what has been provisionally determined as rent by the learned court below does not require interference by this court.

Before going into merits of the matter since preliminary objection has been raised, I would like to first take note of the same, prior to amendment u/s.115 CPC even against the interlocutory order there was no provision of appeal, revision was

maintainable, but after amendment which came into force w.e.f. 1st July, 2002 u/s.115 CPC right of filing revision has been curtailed and unless the order impugned finally decides the rights of the parties by one way or the other revision petition u/s.115 CPC is not maintainable. The Hon'ble Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai [AIR 2003 SC 3044] has considered the scope of post amended provision u/s.115 CPC.

In my considered opinion, when the suit is pending for final adjudication and rights of the parties are still to be finally determined in the pending suit and the order impugned is a mere interlocutory order determining provisional rent which is always adjustable at the final stage does not fall within the scope of Section 115 CPC after amendment made under the Act and the present revision is not maintainable.

Consequently, the present revision petition is not maintainable and the same is hereby dismissed.

Counsel finally submits that suit for determination of standard rent is pending since 2003 and requested that atleast it may be finally decided expeditiously since what is being paid as provisional rent under the order impugned is always adjustable and will not determine the rights of the parties inter se. The request made by him is reasonable and accordingly, I direct the learned trial Judge to decide the suit as early as possible, but not later than six months. Copy of this order be sent to the concerned learned trial court.

FRB [Ajay Rastogi],J.